

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 636 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

RAMILABEN W/O DINESHKUMAR VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 636 of 1993
HL PATEL ADVOCATES for Petitioner No. 1-2
Mr.A.J.Desai, learned A.P.P. for Respondent No. 1
..... for Respondent No. 2-4
-

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 23/05/2003

C.A.V. JUDGEMENT

1. The complainant by name Mandakiniben Mohanlal

Vyas had filed one complaint against the present appellants on 22.2.89 in Naroda police station on the ground that the appellants herein are demanding dowry from her even though she was giving of and on. It is alleged that on 22.2.89 the appellants no. 1 & 2 told her that she would be burnt alive and so saying the appellant no. 2 brought kerosene tin from the kitchen and sprinkled the same on the complainant's body. That the appellant no. 1 mother-in-law gave a push from behind. However, the complainant managed to escape and had got down from the house.

2. At the end of the trial, the Addl. Sessions Judge, Ahmedabad convicted the appellant nos. 1 & 2 under Sec.498(A) and sentenced them to suffer R.I. for one month. The appellant nos. 1 & 2 are also convicted under Sections 307 read with 34 of I.P.C. and sentenced them to two years rigorous imprisonment and to pay a fine of Rs.2,000/- in default rigorous imprisonment for six months. The appellant no. 3 is convicted under section 498(A) and sentenced him to suffer to rigorous imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for three months. Dissatisfied with the said judgment and order, the appellants herein have filed this appeal.

3. The complainant and present accused have filed purshis stating that the offences are non-compoundable as per the provisions of Sec.320 of Code of Criminal Procedure, 1973 however, the parties have desired to separate as husband and wife and therefore they will initiate consent divorce proceedings, in view of the decision in case of Surendra Nath Mohanty and another V/s State of Orissa reported in 1999 S.C. 2181 and in case of B.S.Joshi and others V/s State of Haryana and another reported in 2003 AIR SCW 1824. Therefore, no orders may be passed in this appeal and sentence may be set aside.

4. At the time when the purshis was filed in court, I found that the complainant was not comfortable. Thereupon, I called her in my chamber and asked about whether she has signed the purshis willingly. She said that her husband-appellant no. 3 has paid Rs.75,000/towards maintenance and that there are no chances of her going to her matrimonial house. She has told that she readily and willingly signed the purshis. I have also called her brother in my chamber and he also told that the complainant has signed the purshis and that divorce proceedings are yet to be filed once this Court passes order on the purshis. The said purshis to be taken on record.

5. In case of B.S.Joshi (supra) the Apex Court has observed that in case of Madhu Limaye V/s State of Maharashtra reported in AIR 1978 SC 47 (=) 1978 Cri.L.J.165 has laid down that any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in Sec. 482 or extraordinary power under Article 226 of the Constitution of India. Therefore, if for the purpose of securing the ends of justice, quashing of FIR become necessary, Section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power. In para 12 of the said judgment, while discussing provisions of Sec. 482 of the Cr.P.C., held that in matrimonial offences, it is the duty of the Court to encourage genuine settlements of matrimonial disputes.

6. In case of Surendra Nath Mohanty (supra), considering the fact that parties have settled their disputes outside Court and the accused has undergone three months rigorous imprisonment. Accordingly, though Sec. 326 of I.P.C. was not compoundable, the sentence of imprisonment was reduced to period already undergone.

7. In view of the aforesaid discussion, I am of the opinion that looking to the purshis and taking into consideration the judgment of the Supreme Court, without entering into the merits, the conviction and sentence imposed by the trial court is set aside and the sentence of amount of fine imposed shall remain as it is, for each accused. Accordingly, this appeal is partly allowed.

(SHARAD D DAVE, J)

srilatha